

Sarro v County of Nassau

2008 NY Slip Op 32504(U)

September 10, 2008

Supreme Court, Nassau County

Docket Number: 3524-04/

Judge: Daniel R. Palmieri

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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

Present:

**HON. DANIEL PALMIERI
Acting Justice Supreme Court**

TRIAL TERM PART 48

-----X
**NANCY E. SARRO, INDIVIDUALLY AND AS
PARENT AND NATURAL GUARDIAN OF
THEODORE SARRO, AN INFANT UNDER
THE AGE OF FOURTEEN (14) YEARS,**

Plaintiff,

-against-

INDEX NO.: 13524/04

MOTION DATE: 9-4-08

SUBMIT DATE: 9-4-08

SEQ. NUMBER - 007

**COUNTY OF NASSAU, INCORPORATED
VILLAGE OF ISLAND PARK, TOWN OF
HEMPSTEAD AND IRENE X. GKLOTSOS,**

Defendants.

-----X
The following papers have been read on this motion:

- Notice of Motion, dated 8-15-08.....1**
- Affirmation in Opposition, dated 8-26-08.....2**
- Reply Affirmation, dated 9-2-08.....3**

Plaintiff's motion for leave to reargue this Court's decision dated June 27, 2008, (the Prior Decision) pursuant to CPLR §2221(e), is denied. The contentions of the parties are set forth in the Court's Prior Decision which granted summary judgment to defendant Nassau County (the County), and dismissed this action and any cross claims insofar as asserted against the County.

A motion to reargue is designed to afford a party an opportunity to establish that the Court overlooked or misapprehended the relevant facts or misapplied principles of law. It is not a vehicle to permit a party to argue again the very questions previously decided *Foley v. Roche*, 68 AD2d 558 (1st Dept. 1979); *see also Frisenda v. X Large Enterprises Inc.*, 280 AD2d 514 (2d Dept. 2001) and *Rodney v. New York Pyrotechnic Products Co., Inc.*, 112 AD2d 410 (2nd Dept. 1985) or to offer an unsuccessful party successive opportunities to present arguments not previously advanced. *Giovanniello v. Carolina Wholesale Office Mach. Co., Inc.*, 29 AD3d 737 (2d Dept. 2006).

With respect to reargument, in the present case, the plaintiff fails to direct the Court to any facts disclosed on the original motion which the court may have overlooked or to legal issues or principles that the Court may have overlooked or misapprehended, the consideration of which would alter the result. To the extent that plaintiff suggests that an incorrect legal result was reached, the Court chooses to adopt the legal conclusions previously reached.

Plaintiff argues that because not every factual contention was recited in the Prior Decision then it must follow that the Court overlooked such facts as are now, in this motion, submitted again. Since there is no alleged factual error raised here beyond the interpretation of plaintiff's deposition testimony, it is simply not necessary to report or comment on additional facts which although considered, would not, even if recited, change or alter the Prior Decision. For purposes of reargument, it suffices to say that the Court considered the facts which were relevant and necessary for the Prior Decision.

The primary issues on this motion are the legal conclusions to be drawn from the undisputed facts.

This Court found that there had been no creation of a special duty flowing from the County to the plaintiff. However plaintiff, by this motion, contests the application of certain facts to the legal principles. As noted above, the Court respectfully declines to accept the legal conclusion propounded by the plaintiff and prefers to adhere to its previous determination.

The main contention (of the many advanced by plaintiff) is whether the contacts between injured plaintiff's mother and the County created a special relationship. One method by which such a relationship may be formed is when a municipality violates a statutory duty enacted for the benefit of a specific class of persons. Although it is contended the Vehicle and Traffic Law creates such a special duty, plaintiff has failed to direct the Court to a specific section of that statute or to any other relevant authority in support of such contention. Plaintiff argues that a special relationship was created because the County assumed a positive direction and control in the face of a known blatant and dangerous safety violation. Both of the foregoing requisites were discussed and analyzed in the Prior Decision and the Court chooses to adhere to that analysis.

Strenuously contended by plaintiff is the proposition that the facts yield the conclusion that the County assumed a duty to plaintiff upon which the plaintiff could justifiably place reliance.

It is true that our courts have found a special relationship to exist in certain extraordinary instances. Thus in *Sorichetti v. City of New York*, 65 NY2d 461 (1985), a

special relationship was found where police were informed that there was a violation of a court order of protection by a specified person who was known to the police to have had a violent history, coupled with a promise of immediate action. However, our courts have not extended the holding to cases such as this one and this Court finds that application to these facts is unwarranted.

In a later opinion, the Court of Appeals declined to extend the *Sorichetti* holding to a claim against the New York City Medical Examiner, clarifying that the special relationship in *Sorichetti* arose out of an order of protection, with the municipality's knowledge of a specific danger to a specific person, combined with instructions to the mother of the injured party on the day of the event giving rise to a reasonable expectation of protection. *Lauer v. City of New York*, 95 NY2d 95, 104 fn 2 (2000).

Following *Lauer*, the reach of *Sorichetti* has been further circumscribed with the teaching that the *Sorichetti* "exception is reserved for a few special cases" of which this is not one. *Larato v. City of New York*, 8 NY3d 79, 84 (2006); *Dambra v. Di Donna*, 305 AD2d 958 (3rd Dept. 2003); *cf Mastrianni v. County of Suffolk*, 91 NY2d 198 (1997). Cited in the Prior Decision, where the facts are remarkably similar to *Sorichetti*. Reliance on *Lewis v. City of New York*, 19 Misc 3d 1109A (Sup. Ct. Bronx Cty. 2008) does not yield a different result. In a well written analysis that court (Hon. Paul A. Victor, J.) denied summary judgment where the accident was a direct and immediate result of active misfeasance by a police officer who commanded the operator of a parade truck to drive through an area crowded with pedestrians at a time when the decedent was attempting to get on or off the vehicle. There can be little doubt that the above facts implicate the violation of a statutory

duty (Vehicle and Traffic Law), and the voluntary assumption of a duty, without the need to establish a special relationship.

The facts in our case do not approach in similarity the facts in *Lewis* and to find otherwise would extend that holding beyond its intended purpose. Even granting the plaintiff the benefit of every favorable inference, which she contends this Court failed to do, her testimony concerning her conversation with the unidentified police officer indicated, at best, a promise that the officer would attempt to have more police cars patrol the area and would communicate her concerns to others within law enforcement. This clearly falls short of a promise to the plaintiff's family, in particular, that there would be additional protection from vehicular traffic on Parma Road, upon which she could justifiably rely. *See, Taebi v. Suffolk County Police Dept.*, 31 AD3d 531 (2d Dept. 2006); *cf., Taino v. City of Yonkers*, 43 AD3d 401 (2d Dept. 2007).


In sum, plaintiff's contentions in favor of reargument do not call the Court's attention to any facts that should change the previously reached legal conclusions, are unsupported by citation to persuasive legal authority, and are in effect a restatement of the contentions made in the prior motion. As such plaintiff's request for reargument is denied.

This shall constitute the Decision and Order of this Court.

DATED: September 10, 2008

ENTER

ENTERED
SEP 11 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE


HON. DANIEL PALMIERI
Acting Supreme Court Justice

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